IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2635 OF 2005.
IN
FIRST APPEAL NO. 202 OF 2006.

The United India Insurance Co.Ltd. ... Applicant.
Versus.
Veera Pandiyan Chinaswamy & anr. ... Respondents.

Mrs.Urmila Sanil for the Applicant.

Shri T.J.Mendon for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 27th April, 2006.

P.C.:

1. Rule. Respondent No.1 waives service. Heard the learned Advocates appearing for the parties.

2. The appeal is preferred only by the Insurer of the vehicle involved in the accident. In the trial Court, a plea was taken by the Appellant-Insurance Company that the Driver of the concerned vehicle was not holding a valid and effective driving licence. In the Memorandum of Appeal, a plea is raised that the victim was tranvelling as a gratuitous passenger.

3. It is well settled position of law that the burden of establishing that there was a breach of policy condition by the insurer is always on the Insurance Company. Primafacie, it appears that the said burden is not discharged in this case as no evidence is led by the Appellant. The case which is made out in the Memorandum of Appeal does not appear to have been made out in the

trial Court.

4. Even if the Appellant succeeds in the First Appeal, the Award which is made against the insurer will remain. In such an event, the Appellant-Insurance Company can always recover the amount of compensation paid to the claimant from the insurer. The original claimant need not be deprived of the amount as he has proved his entitlement to receive compensation.

5. Hence Application is rejected. In case the Appellant succeeds in the First Appeal, the amount of compensation which is paid by the Appellant to the claimant can always be recovered from the insurer. It is made clear that the payment of amount by the Appellant to the original claimant will be subject to final outcome of the Appeal. There will be no order as to costs.

Judge.